IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.335 OF 2005
IN
APPEAL FROM ORDER NO. 311 OF 2005

Anant Rajaram Palav. ... Applicant.
Versus.
Hanif Bharucha & anr. ... Respondents.

Shri N.V.Walawalkar with Shri Bipin Joshi for the Applicant.

Shri Saeed Akhtar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 6th May, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. Considering the nature of relief granted by the trial Court, prayer for stay cannot be considered at this stage. So far as the prayer clause (a) of the notice of motion is concerned, grievance of the Applicant is that the prayer (a) which relates to declaration cannot be granted at the stage of hearing of the Notice of Motion. Though there is some substance in the said submission, the same will have to be considered at the time of hearing of the Appeal. Obviously the grant of prayer (a) cannot be considered as granting decree in favour of the original Plaintiffs.

2. The case of the Respondents is that initially the Respondents were inducted in the property on 1st April

1996 for a period of five years and the consideration fixed was Rs.8000/- per month. It is the case of the Respondents/original Plaintiffs that on 7th April 2002 the said arrangement was renewed with retrospective effect from 1st July 2001 upto the year 2011 on the same terms and conditions. The real dispute between the parties appears to be as regards the execution of the said document. The contention of the Appellant is that in the earlier suit filed in the Court of Small Causes the Respondents/Plaintiffs have not disclosed the said document and the Appellant denied execution of the said document in the Police complaint which preceded the filing of the litigation.

3. Considering the fact that the Respondents had agreed to the sum of Rs.8000/- per month from the year 1996 to 2001, when the Respondents are claiming equitable relief, they cannot be allowed to remain in possession of the suit property on the basis of the equitable relief granted by the trial Court on payment of only Rs.8000/- per month. The case of the Respondents is that they have paid at the rate of Rs.8000/- till the end of December 2004 and the Appellant's case is that he has received payment only upto the period ending March 2001. This controversy will have to be decided on the basis of the evidence. The learned Counsel for the Respondents state that as per the agreement between the parties, the Appellant has to pay the electricity

charges and according to him the approximate monthly electricity charges in respect of the premises have been consistently about Rs.6000/- per month.

4. Taking into consideration all the aforesaid facts, it will be in the interest of justice if the Respondents are directed to pay a sum of Rs.15,000/- per month to the Appellant without prejudice to the rights and contentions of the parties till final disposal of this Appeal with effect from 1st April 2005.

5. Hence the Civil Application is disposed of by passing the following order:

(i) The prayer for stay of the impugned Judgment and order is rejected.

(ii) Without prejudice to the rights and contentions of the parties and subject to the final result of the Appeal, the Respondents will keep on paying a sum of Rs.15,000/- per month to the Appellant on or before 10th day of every calender month. The amount payable for the month of April 2005 and May 2005 shall be paid by the Respondents to the Applicant on or before 20th May 2005. The said amount of Rs.15,000/- will be inclusive of

electricity charges.

(iii) It is made clear that the payment of the said amount of Rs.15,000/- per month by the Respondents and the acceptance thereof by the Applicant will be without prejudice to the rights and contentions of the parties.

(iv) In case the Respondents commit any default in payment of the aforesaid amount, liberty to the Applicant to take out appropriate proceedings.

(v) Civil Application is disposed of in the above terms with no order as to costs.

Judge.